Supreme Court, U.S.
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No. 06-_____

In The
Supreme Court of the United States

SHERIFF LEROY BACA,
DEPUTY SHERIFF SEAN BANKS and
DEPUTY SHERIFF THOMAS GARCIA,

Petitioners,

v.

RICHARD MORENO and
THE STATE OF CALIFORNIA,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Samson v. California*, Supreme Court Case No. 04-9728, this Court will address the issue of whether California *Penal Code*, § 3067 – which authorizes suspicionless searches of parolees based on the parolee's agreement to submit to such searches as a condition of parole – violates the Fourth Amendment's prohibitions against unreasonable searches and seizures. This case presents several issues left unaddressed by *Samson*, namely:

1. Does an individual who is subject to either a suspicionless parole search condition or an outstanding arrest warrant have a legitimate expectation of remaining free from detention and searches unless or until law enforcement officers become aware of either the individual's parole status and/or the outstanding warrant?

2. Where an individual is subject to either a suspicionless parole search condition or an outstanding arrest warrant, does it matter whether law enforcement officers have any subjective foreknowledge of either the individual's parole status and/or the outstanding warrant?

PARTIES TO THE PROCEEDINGS

Petitioners (defendants and appellants below):

SHERIFF LEROY BACA, DEPUTY SHERIFF SEAN BANKS and DEPUTY SHERIFF THOMAS GARCIA

represented by Scott Wm. Davenport, Esq., MANNING & MARDER, KASS, ELLROD, RAMIREZ, LLP, 1 Park Plaza, Ste. 500, Irvine, CA 92614; (949) 440-6690.

Respondent (plaintiff and appellee below):

RICHARD MORENO

represented by Stephen Yagman, Esq., YAGMAN, YAGMAN & REICHMAN, 723 Ocean Front Walk, Venice, CA 90291; (310) 452-3200.

Respondent (intervenor below):

STATE OF CALIFORNIA

represented by Doris A. Calandra, Deputy Attorney General, 1300 I Street, Sacramento, CA 95814; (916) 324-5250.

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CITATIONS FOR OPINIONS BELOW

The amended opinion of the Court of Appeals from which this appeal is taken (Appendix [APP] 1-17) is reported at 431 F.3d 633 (9th Cir. 2005). The original opinion of the Court of Appeals (APP 19-59) is reported at 400 F.3d 1152 (9th Cir. 2005).

The opinion of the District Court (APP 60-105), the order allowing the intervention of the State of California (APP 106-107), the final judgment (APP 18), and the order denying the petition for rehearing and rejecting the suggestion for rehearing *en banc* (APP 108-109) were not reported.

BASIS FOR JURISDICTION IN THIS COURT

The Court of Appeals filed its original opinion on March 7, 2005, and an amended opinion on December 9, 2005. The Court denied the petitioner's petition for rehearing and suggestion for rehearing *en banc* on January 23, 2006. 28 U.S.C. § 1254(q) confers jurisdiction on this Court to review on a writ of certiorari the opinion of the Court of Appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The underlying action was brought by respondent pursuant to 42 U.S.C. § 1983, which at the time this action was filed read as follows:

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of

> any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress. The purposes of this section, an Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

The respondent alleges that the petitioners deprived him of rights secured by the Fourth and Fourteenth Amendments, the relevant parts of which read as follows:

> *FOURTH AMENDMENT*: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

> *FOURTEENTH AMENDMENT* (Section 1): "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Overview Of The Case

After suffering a felony narcotics conviction and being ordered to serve a sentence in California State Prison, respondent MORENO was granted parole and, as a condition of his release, waived his right to be free from suspicionless searches and seizures while on parole. This standard agreement – which mirrored the language of California *Penal Code*, § 3067 – provided, "You and your residence and any property under your control may be searched without a warrant by an agent of the Department of Corrections or any law enforcement officer." Appellant's Excerpts of Record [AER] 052.

Importantly, neither the terms of this parole agreement – nor the provisions of *Penal Code*, § 3067 – require either foreknowledge of the searching officer of the search provision nor do they require that the search be performed for a parole purpose rather than a law enforcement purpose. *Id.*

Thereafter, while serving his parole period, MORENO was cited for two misdemeanors and, after he failed to appear at arraignment, a valid warrant was issued for his arrest.

A few months later, MORENO was detained by deputies BANKS and GARCIA based on their suspicion that he was in possession of drugs. During this detention, using a computer in their car, the deputies learned about MORENO's status as a parolee and about the outstanding warrant. MORENO was then booked for both a drug charge and the outstanding warrant, and a parole hold was placed on him.